

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
08/11/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
40K-0056-R-2022  
White, Eugene  
8.00

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
WHITEWATER CREEK - BASIN (40K)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Olsen Ranch, Inc.

OBJECTOR: Olsen's Ranch, Inc.

NOTICE OF INTENT TO APPEAR: USA (Dept. of Interior  
Bureau of Land Mgmt.)

**CASE 40K-0056-R-2022**  
40K 167645-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

Claim 40K 167645-00 appeared in the Preliminary Decree for the Lower Missouri River Division, Whitewater Creek, Basin 40K. The claim is owned by Olsen Ranch, Inc. The claim received an issue remark and a Notice of Intent to Appear ("NOIA") from the United States Bureau of Land Management ("BLM"). The claim was consolidated into Case 40K-0056-R-2022 to resolve the issue remark and NOIA.

### FINDINGS OF FACT

1. Claim 40K 167645-00 received the following issue remark:  
A LATE OBJECTION HAS BEEN FILED TO THE POINT OF DIVERSION AND MEANS OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.
2. A Status Conference for Case 40K-0056-R-2022 took place on September 21, 2022, by telephone conference call. Water Master Eugene C. White presided; Alvin Olsen appeared on behalf of Claimant Olsen Ranch, Inc., and Jennifer Najjar appeared on behalf of the BLM. During the conference, the parties discussed the Self-Objection to the claim as well as potential resolutions to the NOIA. Separate deadlines were then set for the Claimants to respond with their position regarding the late objection and for the parties to file settlement documents resolving the NOIA and potentially the late objection.
3. On December 21, 2022, BLM filed a *Status Report* stating that the BLM had not received any response from Claimant Olsen Ranch, Inc. regarding whether it desired to pursue the late objection or potential resolution to the NOIA.
4. On January 6, 2023, the Court set a show cause deadline for Claimant to show cause why the late objection should not be dismissed pursuant to Rule 22, W.R.Adj.R. Nothing was filed by the ordered deadline.
5. On April 28, 2023, the Court set a filing deadline for NOIA Party BLM to file a statement, including any necessary proposed modifications to claim 41K 167645-00, regarding the resolution of its NOIA. Nothing was filed by the ordered deadline.

### PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
2. Failure to comply with the terms of an Order may result in sanctions, including entry of default and termination of a water right claim, modification of the claim to conform with information before the Court, or dismissal of objections or notices of intent to appear. Rule 22, W.R.Adj.R.

### CONCLUSIONS OF LAW

1. Based on the Claimants' failure to pursue the late self-objection, the objection should be dismissed pursuant to Rule 22, W.R.Adj.R. The issue remark regarding the late self-objection should be removed from the claim and all elements should remain as they appeared in the Basin 40K Preliminary Decree.
2. Based on the lack of response filed by BLM to the Court's April 28, 2023 deadline, the NOIA should be dismissed pursuant to Rule 22, W.R.Adj.R.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Olsen Ranch, Inc.  
5751 E. Whitewater Rd.  
Whitewater, MT 59544

**Service Via Electronic Mail:**

Jennifer A. Najjar

US Dept of Justice, ENRD-NRS

PO Box 7611

Washington, DC 20044-7611

(202) 514-3553

Jennifer.Najjar@usdoj.gov

MontanaBasins.ENRD@USDOJ.GOV

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
WHITEWATER CREEK  
BASIN 40K**

**Water Right Number:** 40K 167645-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** OLSEN RANCH INC  
5751 E WHITEWATER RD  
WHITEWATER, MT 59544

**Priority Date:** NOVEMBER 3, 1898

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 698.00 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 465.00

**Source Name:** WHITEWATER CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	32	34N	32E	PHILLIPS
<b>Period of Diversion:</b>	MARCH 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DIKE					
2		N2SWSW	32	34N	32E	PHILLIPS
<b>Period of Diversion:</b>	MARCH 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DIKE					
3		SWSWSW	5	33N	32E	PHILLIPS
<b>Period of Diversion:</b>	MARCH 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DIVERSION DAM					

**Period of Use:** MARCH 1 TO OCTOBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	162.00		E2	5	33N	32E	PHILLIPS
2	110.00		NE	8	33N	32E	PHILLIPS
3	65.00		SE	8	33N	32E	PHILLIPS
4	128.00		W2	9	33N	32E	PHILLIPS

**Total:** 465.00